

THOMAS ERVIN PAYNE, )  
)  
Movant, )  
)  
v. ) No. 4:13CV1488 JCH  
)  
UNITED STATES OF AMERICA, )  
)  
Respondent. )

This matter is before the Court on movant’s motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. The Court will summarily dismiss the motion because it is successive and movant has not obtained leave from the Eighth Circuit Court of Appeals to file it.

On February 23, 2001, movant brought his first § 2255 motion. Payne v. United States, 4:01CV284 SNL (E.D. Mo.). The case was denied on the merits. Id.

On January 3, 2006, movant brought his second § 2255 motion. Payne v. United States, 4:06CV6 JCH (E.D. Mo.). The case was dismissed as successive. Id.

Movant now argues that he should be released from confinement based on the United States Supreme Court's decision in Alleyne v. United States, 133 S. Ct. 2151 (2013). Movant believes that the decision is retroactively applicable on collateral review and that it provides him relief.

Under 28 U.S.C. § 2255(h) and § 2244(b)(3)(A) movant must first receive permission from the Eighth Circuit Court of Appeals before he can bring a successive § 2255 motion in this Court. Absent certification from the Court of Appeals, this Court lacks authority under § 2255 to grant movant's requested relief. As a result, the motion shall be dismissed. See 28 U.S.C. § 2255, Rule 4.

Accordingly,

**IT IS HEREBY ORDERED** that this action is **DISMISSED**.

An Order of Dismissal will be filed with this Memorandum and Order.

Dated this 5th day of August, 2013.

/s/Jean C. Hamilton  
JEAN C. HAMILTON  
UNITED STATES DISTRICT JUDGE